

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**



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Application for Rehearing  
of Resolution ESRB-8.

Application 18-08-007  
(Filed August 10, 2018)

**RESPONSE OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E)  
TO APPLICATION FOR REHEARING OF RESOLUTION ESRB-8**

Stacy Van Goor  
8330 Century Park Court, CP32D  
San Diego, CA 92123  
Telephone: (858) 654-1534  
Facsimile: (619) 699-5027  
Email: [SVanGoor@semprautilities.com](mailto:SVanGoor@semprautilities.com)

Attorney for:  
SAN DIEGO GAS & ELECTRIC COMPANY

August 27, 2018

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**I. INTRODUCTION AND BACKGROUND**

Pursuant to Rule 16.1(d) of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), San Diego Gas & Electric Company (“SDG&E”) submits this Response to the Application for Rehearing of Commission Resolution ESRB-8 filed by Zuma Beach FM Emergency and Community Broadcasters, Inc. (“Zuma Beach FM Broadcasters”) on August 10, 2018. Commission Resolution ESRB-8 extends the de-energization reasonableness, public notification, mitigation and reporting requirements established for SDG&E in Commission Decision (“D.”) 12-04-024<sup>1</sup> to all electric investor owned utilities (“IOUs”).<sup>2</sup> It also establishes additional reporting and public-outreach requirements.

In its Application for Rehearing, Zuma Beach FM Broadcasters allege, among other things, that in adopting Commission Resolution ESRB-8 the Commission “made major changes in state energy regulatory policy that is contrary to several sections to the plain language of the

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<sup>1</sup> *Decision Granting Petition to Modify Decision 09-09-030 and Adopting Fire Safety Requirements for San Diego Gas & Electric Company* (April 19, 2012).

<sup>2</sup> *Resolution Extending De-Energization Reasonableness, Notification, Mitigation and Reporting Requirements in Decision 12-04-024 to All Electric Investor Owned Utilities*, issued July 16, 2018 (“Commission Resolution ESRB-8”) at 1.

Public Utility Code.”<sup>3</sup> In short, Zuma Beach FM Broadcasters argue that the Public Utilities Code precludes utilities from interrupting service to prevent wildfires.

As discussed below and contrary to Zuma Beach FM Broadcasters’ claim, the Commission has previously recognized that the California Public Utilities Code, specifically Sections 451 and 399.2, allows utilities to interrupt service when faced with an imminent risk to public safety. As such, Zuma Beach FM Broadcasters are wrong to argue that these sections of the Public Utilities Code prohibit utilities from de-energizing portions of their system to prevent catastrophic wildfires. They also misstate the law to argue that de-energization in wildfire-prone areas unlawfully discriminates against those areas. The law allows for distinctions between classes of customers when there is a basis for them. For these legal reasons (and for paramount public-policy reasons), Zuma Beach FM Broadcasters’ Application for Rehearing has no merit and should be denied.

## **II. THE INVESTOR OWNED UTILITIES HAVE THE STATUTORY AUTHORITY TO DE-ENERGIZE FOR PUBLIC SAFETY**

In D.12-04-024, the Commission found that “SDG&E has authority under Pub. Util. Code § 399.2(a) and § 451 to shut off power [de-energize] in emergency situations when necessary to protect public safety.”<sup>4</sup> The Commission also set forth specific notification and mitigation requirements applicable to SDG&E in de-energization events pursuant to its statutory authority.<sup>5</sup> SDG&E has been operating pursuant to the directives outlined in D.12-04-024 since its issuance in April 2012. Since that time, the Commission has noted that other electric utilities have “exercise[d] their authority to [de-energize] during dangerous fire conditions” and

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<sup>3</sup> *Application of Zuma Beach Broadcasters for Rehearing of Resolution ESRB-8* (July 27, 2018) (“Application for Rehearing”) at 3.

<sup>4</sup> D.12-04-024 at 35, Conclusion of Law 1. *See also* Commission Resolution ESRB-8 at 2.

<sup>5</sup> D.12-04-014 at 36, Ordering Paragraphs 1 and 2.

acknowledged that “there [were] no established standards on reasonableness, notification, mitigation and reporting by IOUs other than SDG&E.”<sup>6</sup>

In adopting Resolution ESRB-8, the Commission simply confirmed the law as to all electric IOUs. Commission Resolution ESRB-8 changes neither Commission policy nor law, as alleged in the Application for Rehearing. Accordingly, to the extent Zuma Beach FM Broadcasters suggest that notice (or any further proceedings) were required before the Commission could confirm the utilities’ legal authority in this area, Zuma Beach FM Broadcasters are wrong. The Commission was legally entitled to act through a Commission resolution without the need for hearings or any further proceedings.<sup>7</sup>

In addition to arguing that Pub. Util. Code § 399.2(a) and § 451 bar de-energizations for public safety -- directly contrary to Commission precedent -- Zuma Beach FM Broadcasters argue that Pub. Util. Code § 455(a) and (c) also prohibit utilities interrupting service for safety. They claim that interrupting service to particular customers constitutes an unlawful preference.<sup>8</sup> SDG&E believes that Zuma Beach FM Broadcasters intended to cite Pub. Util. Code § 453(a) and (c). Regardless, this argument lacks merit. Distinctions in rates, service, facilities, etc., are unlawful only to the extent they are unjust or undue.<sup>9</sup> At issue here is a utility’s authority to interrupt service when facing the very real and serious risk that the utility’s facilities may trigger catastrophic wildfires. Customers located in areas that are facing an imminent threat of wildfire

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<sup>6</sup> Commission Resolution ESRB-8 at 2.

<sup>7</sup> As demonstrated by Commission Resolution E-4907, the Commission may act through a resolution when implementing, rather than changing, law or policy. *See also* D.18-07-046. Moreover, no notice is required to alert the public about existing law. In any event, the Commission posted the draft resolution (which affirmed utilities’ legal authority to de-energize for safety) on its Daily Calendar, which suffices as legal notice. *See* footnote 12, below.

<sup>8</sup> Application for Rehearing at 3.

<sup>9</sup> D.07-12-055 at 61.

are not similarly situated to customers who are located elsewhere. There is no illegal discrimination, therefore, when a utility selectively de-energizes portions of its system in response to an imminent threat of wildfire.

As a matter of public policy, Zuma Beach FM Broadcasters' argument is unfortunate. The legal authority allowing utilities to act in the interest of public safety by interrupting service is critical to protecting communities from devastating wildfires that threaten life and property on a massive scale. To be sure, interruptions of service pose risks and are undesirable. But Zuma Beach FM Broadcasters seem to miss that Commission Resolution ESRB-8 serves to minimize those risks and burdens by increasing reporting and promoting coordination with the public.

### **III. ZUMA BEACH FM BROADCASTERS' ARGUMENTS ALLEGING INADEQUATE NOTICE ARE BASELESS**

Zuma Beach FM Broadcasters proffer two main arguments to challenge the Commission's procedures in this matter. First, they argue that the Commission provided inadequate notice to the public about its proposed resolution.<sup>10</sup> This is wrong. The Commission has stated that it posted notice about the resolution in its Daily Calendar.<sup>11</sup> The Daily Calendar is the means by which the Commission satisfies legal-noticing requirements for its proceedings.<sup>12</sup>

Second, Zuma Beach FM Broadcasters allege that the Commission was required to hold an additional round of comments after it revised the draft resolution.<sup>13</sup> The premise is that the revised resolution constituted an alternate decision that required 30 days' review and comment under Pub. Util. Code § 311(g)(1). No such additional notice or comment was required, however. Commission Rule 14.1(d), which was promulgated under Pub. Util. Code § 311,

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<sup>10</sup> Application for Rehearing at 5-6.

<sup>11</sup> Commission Resolution ESRB-8 at 7.

<sup>12</sup> D.06-07-006 at 18.

<sup>13</sup> Application for Rehearing at 9-10.

demonstrates that the Commission’s final resolution was not an alternate decision and, therefore, required no additional notice or comment. It states:

A substantive revision to a proposed decision or draft resolution is not an ‘alternate proposed decision’ or ‘alternate draft resolution’ if the revision does no more than make changes suggested in prior comments on the proposed decision or draft resolution, or in a prior alternate to the proposed decision or draft resolution.

The changes made in Commission Resolution ESRB-8 were based on comments and reply comments submitted in response to the draft resolution. At page 8 of the draft resolution, the Commission itemizes the changes it adopted from the draft resolution. The language immediately preceding the itemized list states, “[b]ased on parties’ comments, several modifications were made to the draft resolution, including the following....” Immediately following the list, the Commission states, “[a]lso in response to comments by the parties, we clarify that the requirements adopted in this resolution are not in conflict with IOU authority to de-energize power lines to ensure public safety provided under the PU Code.” The text of Commission Resolution ESRB-8 thus demonstrates that the Commission’s changes were “suggested in prior comments” to the draft resolution. Accordingly, in accordance with Rule 14.1(d), no further notice or comment period was required.

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#### IV. CONCLUSION

For the reasons set forth above, the Commission should deny Zuma Beach FM Broadcasters' Application for Rehearing.

Respectfully submitted,

/s/ Stacy Van Goor

Stacy Van Goor  
8330 Century Park Court, CP32D  
San Diego, CA 92123  
Telephone: (858) 654-1534  
Facsimile: (619) 699-5027  
Email: SVanGoor@semprautilities.com

Attorney for:  
SAN DIEGO GAS & ELECTRIC COMPANY

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